

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 15264 of Eugene A. Thompson, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Hampton Cross, Administrator, Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs, made on December 21, 1989 to the effect that the Certificate of Occupancy for a "Bed and Breakfast" use should be revoked for the Adams Inn in an R-5-B District at premises 1744-46 Lanier Place, N.W., (Square 2580, Lots 360-824).

HEARING DATE: March 28, 1990  
DECISION DATE: May 2, 1990

1. The properties that are the subject of this appeal are Lots 360, 359, and 824 in Square 2580. They are located on the south side of Lanier Place, N.W. There has been some discrepancy about the addresses of these lots, each of which is improved. Officially, the building and the lot numbers are as follows: Lot 360 - 1744 Lanier Place; Lot 359 - 1746 Lanier Place; and Lot 824 - 1748 Lanier Place. In 1983, the appellant, owner of these properties, removed the house numbers from 1744 and 1746, and changed them to 1742 and 1744 respectively. Consequently, the building addresses and lot numbers presently correspond as follows: Lot 360 - 1742 Lanier Place; Lot 359 - 1744 Lanier Place; Lot 824 - unchanged from 1748 Lanier Place. For purposes of this Order, the lot numbers and the original (and official) addresses will be used.

2. Lot 360, 1744 Lanier Place, is improved with a brick, semi-detached, three-story structure with basement. There is also a carriage house, or garage, at the rear of the site. The structure contains 13 rooms and 7 bathrooms.

3. Lot 359, 1746 Lanier Place and Lot 824, 1748 Lanier Place, are each also improved with a brick, semi-detached, three-story structure with basement. At 1746, there are eleven rooms and three baths. At 1748 Lanier Place, there are nine rooms and three baths.

4. On or about October 17, 1982, the appellant applied for a Certificate of Occupancy for 1744 Lanier Place, N.W. The appellant indicated to the Office of Zoning Administrator that he wished to operate a bed and breakfast establishment at the premises. Appellant was informed by that office that no such use existed under the Zoning Regulations and that he would have to examine the uses defined and select the one that best fits the intended use. Mr. Fahey in the Zoning Administrator's Office told the appellant that for a bed and breakfast use, a rooming house Certificate of Occupancy should be requested. This is because without a dining room, the facility would not be a hotel. Furthermore, hotels are not permitted in residential districts.

Pursuant to these instructions, the appellant applied for a rooming house Certificate of Occupancy.

5. At the time that the appellant applied for the Certificate of Occupancy the procedure in the Office of the Zoning Administrator was to issue a Certificate of Occupancy without inspecting the property, if the same type of Certificate of Occupancy previously existed on that property. The appellant indicated on the Certificate of Occupancy application that the prior use of 1744 Lanier Place was a rooming house. He based this assumption on seeing people enter and leave the property regularly while he lived across the street for several years at 1749 Lanier Place. However, there is no record of a prior Certificate of Occupancy existing on the property.

6. On August 9, 1983, appellant was issued Certificate of Occupancy No. B132960 for a rooming house at 1744 Lanier Place, N.W., Lot 360 Square 2580. No Certificate of Occupancy was applied for or received for Lots 359 or 824. The appellant changed the addresses after the Certificate of Occupancy was received. The addresses were changed so that mail addressed to 1744 Lanier Place would be delivered to the building known as 1746 Lanier Place - the new location of the appellant's office. Also, visitors to 1744 would be directed to the building originally containing the 1746 address.

7. The lots are located in an R-5-B District. While BZA rooming houses are permitted in residential districts, inns are not.

8. The appellants invested \$75,000 renovating the property for the proposed use. Subsequently, he and his wife opened their establishment and called it the "Adams Inn". The sign bearing this name appears on 1746 Lanier Place.

9. In describing the establishment, the appellant testified that 1744 Lanier Place has 17 bedrooms and seven baths. On the first floor there is a fireplace and telephone. The television set is kept there, as well as games and puzzles for use by the guests. Coffee is provided for refreshment and pre-packaged continental breakfasts are served. The appellant maintains that there is no dining room or kitchen. The Adams Inn serves out-of-town tourists as well as guests of neighbors.

10. Around 1987 a number of city residents began to complain to their Councilmembers about the proliferation of inns in residential districts and the negative impact that they have on these neighborhoods.

11. In September of 1987, at the request of Councilmember John Ray, Chairman of the Committee on Consumer and Regulatory

Affairs, the Department of Consumer and Regulatory Affairs (DCRA) conducted a regulatory survey of bed and breakfast facilities in the District of Columbia. They were compared with rooming and boarding houses located in the city.

12. The survey team consisted of inspectors in the following fields: food, zoning, housing, electrical and construction. There was also an Office of Compliance (OCOM) investigator.

13. While conducting the survey at the Adams Inn, the OCOM investigator was informed by appellant's wife, Mrs. Thompson, that the average length of stay of guests at the Adams Inn was from one to three days and that rooms were rented on a daily basis. He also learned that continental breakfasts were served. The inspectors concluded that the facility contains a kitchen and central dining area. Based on the information gathered in the survey, the DCRA determined that the Adams Inn operated as an inn rather than a rooming house.

14. Responding to the concerns raised over inns in residential districts, the Zoning Commission held hearings in February of 1988 on the issues of home occupations and transient accommodations. At these hearings, DCRA presented the information gathered in their survey.

15. In March 1988, Diane Haines, Director of the Office of Compliance, directed the appellant and other owners of bed and breakfast establishments to attend a compliance meeting held on or about March 9, 1988. Appellant was directed to bring to the compliance meeting information about any licenses that he possessed with respect to the business, any certificates of occupancy, tax information, and any communications he had with DCRA concerning how the appellant determined that the business was a rooming house. Appellant failed to attend this meeting.

16. By letter dated June 7, 1988, the Office of Compliance directed the appellant to obtain a Certificate of Occupancy and business license for an inn within two weeks of receiving this letter. Appellant was also informed that penalties would result for failure to comply with these directions. Appellant did not comply with the mandate of OCOM.

17. On or about August 9, 1988 the appellant was issued a Notice of Infraction from the Office of Compliance. He was cited for using a building without complying with the Certificate of Occupancy, in violation of 11 DCMR 3204.4.

18. In September 1988, Diane Haines, Acting Chief, OCOM, met with Hampton Cross, Administrator of the Building and Land Regulation Administration (BLRA); Patricia Montgomery, Assistant Administrator, BLRA; Paul Waters, Enforcement Officer, OCOM; and

Jonathan Farmer, an attorney representing another bed and breakfast establishment. They discussed the enforcement action that DCRA would take concerning bed and breakfast establishments that were operating without an inn Certificate of Occupancy.

19. At that September meeting Mr. Farmer, attorney for other property owners, requested that DCRA hold in abeyance any enforcement action against the bed and breakfast facilities pending the publication of the Zoning Commission's final rules on transient accommodations. Considering this a reasonable request, DCRA agreed to honor it.

20. On December 16, 1988 the hearing on the appellant's case was held before an Administrative Law Judge (ALJ). The government moved for dismissal of the case, stating that the issues were unclear. The appellant did not join the government in the request for dismissal.

21. The Office of Adjudication issued its Decision and Order on December 16, 1988. The ALJ found that the respondent (appellant herein) did not receive notice of the hearings. It was also noted that the government moved for dismissal. The case was dismissed based on the government's motion.

22. DCRA waited a year for final action by the Zoning Commission. Because no final action was taken by October 1989, DCRA sent a letter, dated October 26, 1989, to the appellant indicating an intention to revoke the rooming house Certificate of Occupancy on 1744 Lanier Place.

23. On November 3, 1989, Zoning Commission Order No. 611 (Case No. 87-31) on Transient Accommodations became effective. The new regulations more clearly delineate the guidelines for determining whether an inn or rooming house use is being made of the property.

24. By letter dated December 21, 1989, Hampton Cross, Administrator, BLRA, advised the appellant of his intention to revoke the Certificate of Occupancy issued for 1744 Lanier Place unless review was sought by the Board of Zoning Adjustment.

25. On December 31, 1989, the appellant filed this appeal with the Board of Zoning Adjustment. The appellant maintains that to revoke the Certificate of Occupancy would be an error because the use complies with the rooming house use as that term was defined in 1983. The appellant submitted an extensive statement to the Board in opposition to the proposed revocation. The appeal was set for hearing on March 28, 1990.

26. A rooming house survey was conducted on March 27, 1990. The Adams Inn was inspected again. The findings were substantially

the same as in the bed and breakfast survey that took place in 1987. It was found, however, that in addition to 1744 Lanier Place being operated as a bed and breakfast facility, the appellant had expanded his business to 1746 and 1748 Lanier Place as well as to the second floor of the garage on Lot 360.

27. At the hearing before the Board, the appellant first argued that because the case was dismissed by the ALJ, there is no final decision of the Zoning Administrator from which to appeal and that the Zoning Administrator has the burden of proving that the bases for his intent to revoke are valid. He maintains that the government is in the position of "appellant" in this case.

28. The decision of the Zoning Administrator is final in that it represents the department's determination to revoke the rooming house Certificate of Occupancy. The Zoning Administrator effectively stayed final action to afford the appellant an opportunity to come into compliance. The failure to comply would effecuate final revocation. Because the decision to revoke was final, the property owner is the appellant who bears the burden of proving error.

29. The appellant maintains that the rooming house Certificate of Occupancy should not be revoked, and he bases his argument on the following:

- a. Use fits definition of rooming house in the 1983 Zoning Regulations;
- b. issue preclusion;
- c. estoppel;
- d. laches; and
- e. lack of authority of the Zoning Administrator's Office

30. In 1983, the definition of rooming house was silent as to kitchens and dining facilities. They were, therefore, not prohibited. The appellant indicates that the establishment contains a sink and refrigerator, but that this does not constitute a kitchen. The continental breakfasts served are pre-packaged, not prepared on the premises.

31. The Zoning Administrator's Office relied on the conclusions reached by the inspectors that there is a kitchen and a dining room and that guests rent the rooms for an average of three to seven days on a daily basis. These factors lead the Zoning Administrator to conclude that the use of the facility more closely fits the "inn", rather than the "rooming house", definition.

32. The Board concurs with the findings of the Zoning Administrator regarding the use of the subject premises.

33. Appellant asserts that the Zoning Administrator's Office is precluded from relitigating the issue whether their Certificate of Occupancy is valid, because the District of Columbia government had a full opportunity to litigate this issue at the hearing before the Administrative Law Judge (ALJ).

34. The doctrine of issue preclusion prevents the same parties from relitigating an issue actually decided in a previous, final adjudication, whether on the same or a different claim.

35. The Board finds that the issue was not litigated at the hearing before the ALJ, that the case was dismissed because the issues were unclear. Therefore, the hearing before the Board is not a relitigation of an issue previously decided.

36. Appellant argues that the government is estopped from revoking the Certificate of Occupancy.

37. The elements of estoppel, as set forth in Goto v. District of Columbia Board of Adjustment, D.C. App., 423 A.2d 917, 925 n.15 (1980), are as follows:

(1) actions taken by petitioner in good faith, (2) some affirmative response by the District, (3) that petitioner made expensive and permanent improvements in reliance, and (4) that the equities are strongly in petitioner's favor.

38. Appellant asserts that the elements of estoppel are present in this case. He maintains that he, in good faith, informed the Zoning Administrator's Office of the intended use of the premises and the amenities that would be offered. The officials told him that the proper Certificate of Occupancy would be one for a rooming house. The appellant then purchased the premises and the government issued a rooming house permit. Since the purchase, the appellant has permanently improved the premises by investing a further \$75,000 in reliance on the Certificate of Occupancy. He also leased and improved parking spaces for use by their patrons. He argues finally that, in four years of operating the facility the government failed to raise any questions about the correctness of the Certificate of Occupancy, that there is no prejudice to the District of Columbia because the facility is an asset in the community and that the equities strongly favor the appellant.

39. The government maintains that three of the four elements of estoppel were not met. The government stated that by altering the addresses on the subject premises and adjacent buildings, to allow for impermissible expansion of the facility, the appellant did not act in good faith. It is asserted that these acts of the appellant cannot be based upon any action taken by the government. Finally, the government argued that the equities do not favor the

appellant.

40. The Board finds that the good faith action at issue is that of applying for the Certificate of Occupancy and that actions taken subsequent to that are irrelevant to the good faith argument herein made.

41. The Board finds that the appellant made a good faith effort to ascertain what type of permit would be proper for the use he described to the official at the Zoning Administrator's Office; that the official advised the appellant that a rooming house Certificate of Occupancy would be proper; and that the appellant made improvements in reliance on the information provided. The Board finds, however, that the equities more strongly favor the government because it is mandated to ensure that the use of property corresponds with the Certificate of Occupancy issued on that property. The government must also ensure that the use described in the Certificate of Occupancy more closely fits the actual use than any other use in the Zoning Regulations.

42. No Certificate of Occupancy has been issued for 1746 or 1748 Lanier Place. The actual use of 1744 Lanier Place is most accurately described by the term "inn" as that term was defined in 11 DCMR 199 at the time of application for the Certificate of Occupancy.

43. The Board finds that the Office of the Zoning Administrator and the Office of Compliance have afforded the appellant adequate opportunities to bring the Certificate of Occupancy into compliance with the requirements of the Zoning Regulations by either applying for an "inn" Certificate of Occupancy, scaling down the use or applying with this Board for relief from the Zoning Regulations. The appellants made no effort to assist the government in bringing the use into compliance with the Certificate of Occupancy issued.

44. The appellant argues that laches bars the attempted revocation. The doctrine of laches is defined as:

the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches.

Wieck v. D.C. Board of Zoning Adjustment, 383 A.2d 7, 11 (D.C. Ct. App. 1978).

The appellant maintains that the Certificate of Occupancy was issued in 1983, at which time the government was fully aware of the intended use of the property. But, he argues, the government waited until 1987 to question the validity of the Certificate of Occupancy and it did not begin to proceed with its action against

the appellant until 1989. The appellant argues that no explanation was offered for these delays.

45. The government, on the other hand, maintains that it was unaware that the appellant was operating an inn until the bed and breakfast survey was conducted in 1987. The government asserts that no immediate action was taken so that the appellant would have an opportunity to come into compliance with District of Columbia law. The appellant was informed of this in September of 1988 at the compliance meeting. The government also notes that it delayed further action upon the request of an attorney for persons in the same position as the appellant.

46. The Board finds that the doctrine of laches is inapplicable as a defense in this case. Before one can assert a right one must be made aware of it. The government did not become aware of its right to challenge the Certificate of Occupancy until after the bed and breakfast survey in 1987. The government informed the appellant of its intentions within a reasonable period of time. The government satisfactorily explained the reason for delaying further action until 1989, and the appellant has not evidenced prejudice by the two year delay.

47. The appellant argues that the Zoning Administrator has no authority to interpret and construe the Zoning Regulations, that to do so is to usurp the authority of this Board.

48. The Board finds that the Zoning Administrator acted within his authority in deciding to revoke the Certificate of Occupancy according to his interpretation of the applicable Zoning Regulations.

49. The appellants ultimately argue that the regulation pursuant to which the Zoning Administrator bases his authority to revoke the Certificate of Occupancy (14 DCMR 1406 et.seq.) and the law promulgating these provisions, are invalid.

50. The Board has no authority to determine the validity of these two pieces of legislation.

51. The Kalorama Citizens Association (KCA) requested that it be permitted to intervene in the subject appeal on behalf of owners of property within 200 feet of the site. The Board allowed the KCA to intervene.

52. KCA expressed opposition to the appeal and requested that it be denied. In statement to the Board, the KCA addressed all of the major issues raised between the appellant and the government, and expressed its support for the government's position on these matters. KCA argued that the Adams Inn is not a rooming house but an inn that provides accommodations to transient guests. As an



inn, it is improperly located in a residential district.

53. Responding to a very important point raised by KCA, the Board finds that the Zoning Regulations in effect at the time that the Adams Inn began operating defined the term "inn" with more particularity than the term "rooming house". The definition of "rooming house" permits both transient and long-term residents, while the "inn" definition involves "habitable rooms or suites reserved exclusively for transient guests who rent these rooms or suites on a daily basis".

54. Where two definitions exist in the regulations, with one being more particular and specific than the other, and the actual use of the premises meets all the criteria of both definitions, the more specific definition applies.

55. The Zoning Regulations require that an applicant seek a certificate of occupancy for the use that most accurately describes the use of the premises. The Board finds that, as between the two definitions, the operations at the Adams Inn most closely resemble an inn.

56. By letter dated March 21, 1990, Advisory Neighborhood Commission (ANC) 1C expressed the position that the certificate of occupancy should be revoked. By resolution adopted March 7, 1990, the ANC 1C noted that for the past ten years it has reviewed the issues arising from the operation of bed and breakfast establishments in residential zones. ANC 1C observed that such operations cause the following problems:

- a. They increase noise;
- b. disturb neighbors;
- c. deprive residents of public parking;
- d. create additional trash with attendant trash disposal problems;
- e. increase traffic on residential streets, both automobile and service supply vehicles, private and commercial;
- f. artificially inflate property values;
- g. reduce the availability of residential housing; and
- h. unlawfully and unfairly compete with similar businesses in commercial zones.

The ANC concluded, therefore, that it is an inappropriate use, that there is no justifiable reason for a zoning adjustment and the

appeal should be denied.

57. The Board appreciates the concerns of the ANC which address the inappropriateness of this commercial use in residential areas. However, because the ANC's concerns do not address the definitional issues raised in this appeal, the Board does not base its decision on the position of ANC 1C.

58. A representative of the Residential Action Coalition testified in opposition to the appeal. She indicated that property owners should be required to comply with the Zoning Regulations and anti-conversion laws, that the city and citizens acted in a timely fashion to prevent the continuation of unlawful uses and that there is a great concern over the loss of housing stock in the District of Columbia.

59. The Ward One Council, by letter dated March 28, 1990, expressed its opposition to the appeal. The association expressed support for the efforts of the government in enforcing the Zoning Regulations and protecting residential areas from non-residential uses.

60. Councilmembers John Ray, Chairman of the Committee on Consumer and Regulatory Affairs, Betty Anne Kane, at-large Member, and Frank Smith, Ward One Representative, testified in favor of the revocation. They expressed concern over the message that will be conveyed if property owners are permitted to circumvent the regulations. The Council Members urged the Board to assist the government in its attempt to protect the housing stock in the city. They requested that the appeal be denied.

61. A neighbor residing at 1789 Lanier Place, N.W. testified in opposition to the appeal. He noted that the appellants had adequate opportunity to comply with the requirements of the DCRA but that they did not do so. He also expressed an interest in preventing the intrusion of commercial uses in residential districts.

62. Two letters and a petition containing thirteen signatures were received in opposition to the appeal. No letters were received in support.

#### CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the Zoning Administrator did not err in deciding to revoke the rooming house Certificate of Occupancy on premises 1744 Lanier Place, N.W.

When the appellant applied for the Certificate of Occupancy,

"rooming house" was defined in the Zoning Regulations as follows:

Rooming House - A building or part of a building, other than a motel, hotel, or private club, that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the operator or manager, and when the accommodations are not under the exclusive control of the occupants.

Section 199.9 of the Zoning Regulations also contained the following definition of "inn".

Inn - A building or part of a building in which habitable rooms or suites are reserved exclusively for transient guests who rent these rooms or suites on a daily basis. Guest rooms or suites may include kitchens, but central dining other than continental breakfast for guests is not allowed. Commercial adjuncts, function rooms, and exhibit space as permitted in hotels are not allowed. The term "inn" shall not be interpreted to mean motel, hotel, private club, or apartment house.

The Board concludes that the appellant had the responsibility of applying for the Certificate of Occupancy that most accurately described the intended use. The Board further concludes that when a Certificate of Occupancy is inconsistent with the actual use of the property, the owner is in violation of the Zoning Regulations.

It is the opinion of the Board that the actual use of 1744 Lanier Place is best described as an "inn" as that term was defined in the Zoning Regulations when the appellant applied for the Certificate of Occupancy. It is, therefore, unnecessary to apply the new definition of "inn" retroactively.

The Board concludes that the defenses raised by the appellants - issue preclusion, estoppel, and laches - are inapplicable in this case.

The Board concludes that it has considered the views and concerns expressed by ANC 1C under the "great weight" statute.

In light of the foregoing, it is hereby, ORDERED that the appeal is DENIED.

VOTE: 4-1 (Charles R. Norris, John G. Parsons, Paula L. Jewell, and William F. McIntosh to deny; Carrie L. Thornhill opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

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ATTESTED BY: Edward L. Curry  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: FEB 22 1991

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15264Ord/TWR/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPEAL NO. 15264

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, and FEB 22 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

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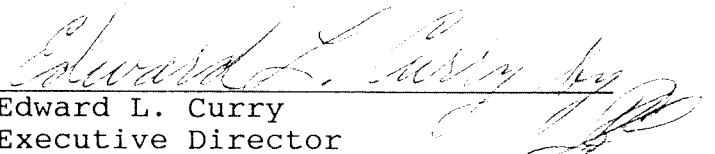
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Executive Director

DATE: FEB 22 1991

ATTES.4/BHS